

REMARKS/ARGUMENTS

In the Restriction/Election of Species Requirement dated November 02, 2008 the Examiner delineated Groups I-IX, shown on pages 2-4 of the Office Action, as being patentably distinct.

The Examiner further required the election of a single species. Accordingly, applicants elect with traverse Group I, Claims 24-59, 72-74 drawn (in part), to a method for stimulating hair growth comprising administering to a subject a composition comprising the nucleic acid of SEQ. ID NO:1 or nucleic acid encoding the polypeptide of SEQ. ID NO: 2., and for the species, Applicants elect saponins, both with traverse.

The claims of Groups I-IX are integrally linked as methods for stimulating/treating hair growth using nucleic acid, a polypeptide encoded by the nucleic acid, and a compound that recognizes the polypeptide or a compound that binds to IL-15 receptor chain. The polypeptides disclosed in the instantly claimed invention are those which are encoded by the nucleotide and which have antigenic or biological activity.

A second hair growth stimulating agent (saponins) can be used to stimulate hair growth.

There is a special technical feature when taken as a whole links all of the groups as a single inventive concept.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. All of the groups have a community of chemical or physical properties that have at least one property in common which is responsible for the function of the relationship.

Further, M.P.E.P § 803 state as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of all the claims would not constitute a serious burden on the Office.

For the reasons set forth above, Applicants request that the election/restriction requirement be withdrawn.

Applicants request that if the elected invention is found allowable, withdrawn groups which include the limitations of the allowable claims be rejoined.

Applicants further request that if the elected species is found allowable, the Examiner expand the search to include non-elected species.

Divisional application filed thereafter claiming the non-elected species should not be subject to double-patenting ground of rejection 35 U.S.C. § 121, In re Joyce (Comr. Pats. 1957) 115 USPQ 412.

Applicants submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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